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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 474 474

INGRAM M. STAINBACK, GOVERNOR OF THE TERRITORY OF HAWAII; WALTER D. ACKERMAN, JR., ATTORNEY GENERAL OF THE TERRITORY OF HAWAII, ET AL.,

Petitioners,

vs.

MO HOCK KE LOK PO, AN ELEEMOSYNARY CORPORATION, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

C. NILS TAVARES,
Counsel for Petitioners.

WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii;
RHODA V. LEWIS,
Assistant Attorney General of Hawaii;
THOMAS W. FLYNN,
Deputy Attorney General of Hawaii,
Of Counsel.

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INGRAM M. STAINBACK, GOVERNOR OF THE TERRITORY OF HAWAII; WALTER D. ACKERMAN, JR., ATTORNEY GENERAL OF THE TERRITORY OF HAWAII, AND W. H. LOPER, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE TERRITORY OF HAWAII,

Petitioners,

vs.

MO HOCK KE LOK PO, AN ELEEMOSYNARY CORPORATION; DAI KUNG CHINESE SCHOOL, AN ELEEMOSYNARY CORPORATION; CHUNG SHAN CHINESE SCHOOL ASSOCIATION, AN ELEEMOSYNARY CORPORATION; WAH CHAN THOM, WILFRED CHONG AND LEONG NGET CHO,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, BEFORE JUDGMENT.

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Ingram M. Stainback, Governor of the Territory of Hawaii, Walter D. Ackerman, Jr., Attorney General of the

Territory of Hawaii, and W. H. Loper, Superintendent of Public Instruction of the Territory of Hawaii, petitioners, respectfully pray for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit before the rendition of judgment in said court, for the review of a case in said Court of Appeals, No. 12087, there pending upon appeal from the final amended judgment of a specially constituted three-judge district court for the District of Hawaii, made and entered February 13, 1948.

Jurisdiction

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

Summary

This case involves the validity of a statute of the Territory of Hawaii, Act 104 of the Session Laws of Hawaii 1943, now chapter 31 of the Revised Laws of Hawaii 1945, and is the same case docketed in this Court as No. 52 of this term, upon direct appeal to this Court from the aforesaid final amended judgment of the specially constituted three-judge district court for the District of Hawaii, made and entered February 13, 1948. This Court, by order entered June 1, 1948 in said cause (then No. 787 of the October Term, 1947) after reciting that the jurisdictional statement filed in said cause had been considered, postponed further consideration of the question of the jurisdiction of this Court to the hearing of the case on the merits.

Appellants in said cause (No. 52 of this term), because of grave doubts as to their right of direct appeal to this Court, said doubts having been expressed in the jurisdictional statement heretofore considered by this Court, likewise noted and perfected their appeal to the United States Court of Appeals for the Ninth Circuit. This petition is

filed for the purpose of presenting the request that, in the event this Court does not have jurisdiction on the direct appeal to this Court (No. 52), the cause be brought before this Court by the issuance of a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, before the rendition of judgment by said Court of Appeals. The appeal necessarily lies in said Court of Appeals if it does not lie in this Court.

The transcript of the record of the cause docketed in the United States Court of Appeals for the Ninth Circuit as No. 12087, duly certified and filed in support of this petition, is identical with the record filed in connection with the direct appeal to this Court, said No. 52. The petitioners have adopted as their specification of errors in said No. 12087 in the Court of Appeals the assignment of errors filed with the petition for direct appeal to this Court. The opinions below, statement as to jurisdiction, statement of the case, and argument, are the same as set forth in the brief filed by these petitioners as the appellants in said No. 52 in this Court. Petitioners hereby adopt as their brief in support of this petition, and as their brief in the event the writ of certiorari prayed for should be granted, the brief filed by them as appellants in said No. 52, and request this Court to consider this petition in conjunction with the direct appeal to this Court (No. 52).

Questions Presented

The questions presented are the same as set forth in the specification of errors in the brief filed by these petitioners as appellants in said No. 52 in this Court, which specification of errors is hereby adopted for the purposes of this petition.

Reasons Relied On for Allowance of Writ

This cause involves important questions, as shown by the brief filed by these petitioners as appellants in No. 52, and the public interest will be promoted by prompt settlement of such questions.

The novelty of the questions as to jurisdiction of the specially constituted three-judge district court of the District of Hawaii, and as to the right of direct appeal to this Court from a court in Hawaii under the law governing the case at the time of the appeal, justified these petitioners, appellants in said No. 52 in this Court and appellants in said No. 12087 in the Court of Appeals for the Ninth Circuit, in taking their appeal to each said court. *Healy* v. *Ratta*, 289 U. S. 701, 292 U. S. 263; *Wilentz* v. *Sovereign Camp*, 306 U. S. 573; *Phillips* v. *United States*, 312 U. S. 246, 254.

This Court having considered the novel jurisdictional questions presented in the jurisdictional statement filed in said No. 52 (then No. 789 of the October Term, 1947), and having postponed further consideration of such questions to the hearing of the case on the merits, and the parties on both sides accordingly having agreed that the case should be held in abeyance in the Court of Appeals, and having proceeded with the case in this Court not only as to the questions of jurisdiction but also as to all aspects of the case, it is respectfully submitted that prompt settlement of the important questions presented by this case can be obtained only by this Court's assuming jurisdiction of the case and disposing of all of the questions involved. Such jurisdiction could be assumed by the issuance of the petition prayed for, in the event this Court should decide that a direct appeal did not lie to this Court from the judgment of the district court, and that accordingly the appeal taken to the Court of Appeals for the Ninth Circuit did lie.

Occasion for the alternative application made to this Court through the taking of a direct appeal and through the presentation of this petition, will not arise again, once the jurisdictional questions are adjudicated by this Court.

Dated at Honolulu, T. H., this 11 day of December, 1948.

INGRAM M. STAINBACK,
Governor of the Territory of Hawaii;
WALTER D. ACKERMAN, JR.,
Attorney General of the Territory of Hawaii, and
W. H. LOPER,
Superintendent of Public Instruction of the Territory of Hawaii,
Petitioners,

By C. NILS TAVARES,
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Attorney General of Hawaii;
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